

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast	)	
Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
TO: Chief, Mass Media Bureau		

**COMMENTS OF DAUGHERTY BROADCASTING COMPANY L.L.C.**

Daugherty Broadcasting Company L.L.C. (“DBC”), by its attorney, hereby respectfully submits the following comments in this proceeding:

1. DBC is a West Virginia limited liability company. Currently, all of the membership units in the company are issued to Teresa L. Daugherty. However, Teresa L. Daugherty and her husband, Steve, are both “radio people”, employed in the broadcasting industry, and Steve is an officer of the company.

2. AM Broadcast Station WBRJ, Marietta, Ohio, is a 5 kW, daytime broadcast station.<sup>1</sup> The station was established in 1965 by the Marietta Times and became a very successful

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<sup>1</sup>The station’s license provides for limited nighttime operation, but such operation is not protected from interference because it achieves a field of less than 141 mv/m at 1 km. Thus, the station is classified as a “Class D” station, i.e., a daytimer. 47 C.F.R. Section 73.21(a)(3).

community institution. Unfortunately, however, under subsequent owners the station fell upon hard times and went silent. In early 2000, while the station was silent, Steve Daugherty, a radio sportscaster who was then working for Charter Media, became aware that the station's license was for sale, and became interested in the possibility of acquiring the station. Ultimately, money was borrowed from a bank and DBC became the owner of the station's license. However, the station had lost its transmitter site, so DBC did not acquire much of anything else, except for a few pieces of equipment. The station went back on the air on June 20, 2001, and is currently operating with a long wire antenna under a special temporary authority.

3. An application has been filed for assignment of the WBRJ license to Clear Channel Broadcasting Licenses, Inc. The application was filed on August 16, 2001, but has never been acted upon. The FCC staff advises that action has been withheld because of the pending proceeding in this docket.

4. In truth, DBC's application should never have been flagged. It was flagged solely because BIA, whose revenue figures are relied upon by the Commission, made an egregious mistake and showed that Station WBRJ had revenues in the year 2000 whereas, in fact, it was off the air in the year 2000 and had no revenues. BIA has corrected its mistake and issued corrected figures. DBC has filed a petition with the Mass Media Bureau, attempting to show that its application was flagged by mistake. Additionally, DBC's attorney has requested a meeting with the Bureau Chief to discuss the matter but, so far, there has been no response to the request, no meeting has ever taken place, and no action has been taken on the application.

5. Continued FCC inaction on the application causes no significant damage to Clear Channel. Clear Channel already programs the station and collects any revenues that it may generate

under a perfectly legal time brokerage agreement which complies with all of the Commission's Rules and Regulations. DBC entered into that agreement, because the Daughertys recognized that it would be suicidal to attempt to operate a small daytime AM radio station in the small Parkersburg/Marietta market, where the other stations in the market are divided between two major competitors: Clear Channel and Burbach. Parkersburg/Marietta is the 236<sup>th</sup> market in the U.S. In these small markets, it is unrealistic to expect to have large numbers of owners dividing up the available revenues. The "pie" is too small to allow that kind of competition and still provide the revenues needed to support high quality programming. Because Clear Channel already supplies programming to Station WBRJ, and receives any revenues that the station generates, allowing Clear Channel to own the station will not have any effect, whatsoever, on the competitive landscape in the market. Most of the revenues will still be divided between the same two principal competitors.

6. As small broadcasters, the Daughertys appreciate the Commission's concern with the concentration which has taken place in the radio industry since the Telecommunications Act of 1996. A handful of large companies - Clear Channel, Citadel, Bonneville, Cox and Cumulus - now control practically all of the stations that are worth controlling. Indeed, the figures given in paragraph 35 of the NPRM, showing that there has been a 25% decrease in the number of radio station owners since 1996, actually understate the concentration that has occurred. In the large markets, there has been a much larger decline in the number of owners. For example, in the top 50 markets, there has probably been a decline of more than 50%.

7. It would be wonderful if some way could be found to put the toothpaste back in the tube and go back to an environment in which small broadcasters, e.g., the Daughertys, could flourish. The problem is that there is nothing proposed in this proceeding which would even begin

to accomplish that task. To do it the Commission would have to require divestitures and would have to nullify hundreds of local marketing agreements and joint sales agreements. Nobody, either on the Commission or on Capitol Hill, has even remotely contemplated such a drastic result.

8. The effect, therefore, of this proceeding is to simply create great hardship for small broadcasters, e.g., the Daughertys, who entered into agreements to sell their radio stations in reliance upon rules and policies which gave no warning that action on the applications would be withheld for months or years. In the case of the Daughertys, they need the proceeds from the sale of Station WBRJ to advance their own careers; and to furnish the capital needed to succeed in other business ventures, including very possibly the acquisition of other, more viable radio stations. So long as action on their application is withheld, their lives are on hold.

9. For these reasons, the Daughertys respectfully submit that it is grossly unfair to apply new rules retroactively, to either bar transactions which were perfectly legal under the old rules or, as in this case, to “temporarily” withhold action on such transactions for months or years. To the extent that the Commission adopts any new rules, they should be applied only prospectively to applications filed after they become effective. Similarly, to the extent that the Commission’s interim policy contemplates withholding action on applications filed prior to the initiation of this rule making, it is unfair and should be modified.

10. Out of the 12,932 radio stations in the United States, no more than 100 transactions are currently affected by the interim policy. Consequently, the practice of withholding action on transfers under the interim policy can have only a tiny effect - a de minimis effect - on the overall, nationwide concentration problem. The trivial benefits, if any, arising from the application of the policy to applications such as those filed by the Daughertys are not worth the pain and

disruption which it causes to the real people impacted by the policy.

Respectfully submitted,

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